IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4941 of 2003

with

SPECIAL CIVIL APPLICATION No 112 of 2004

to

SPECIAL CIVIL APPLICATION No 130 of 2004

with

SPECIAL CIVIL APPLICATION No 995 of 2004

to

SPECIAL CIVIL APPLICATION No 1002 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ST NIVRUTTA (RETIRED) KARMACHARI SANGH

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:
1. Special Civil Application No. 4941 of 2003
MR AK CLERK for Petitioner No. 1-3
MR HARDIK C RAWAL for Respondent No. 1
RULE SERVED for Respondent No. 2
2. Special Civil Applications Nos. 112 to 130 of 2004
MR AK CLERK for Petitioner No. 1
MR HC RAVAL for Respondent No. 1
3. Special Civil Applications Nos. 995 to 1002 of 2004
MR AK CLERK for Petitioner No. 1
MR HC RAVAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/07/2004

ORAL COMMON JUDGEMENT

1.0. This group of petitions are filed for the relief that the petitioners be granted the benefit of higher ceiling of the maximum amount of gratuity w.e.f. 1st April, 1995 to pay the amount of arrears of gratuity with the running interest.

2.0. The facts of the case are that earlier the upper limits of gratuity amount was Rs. 1 lac. In the year 1995, the State Government and also the Central Government by notifications raised it to Rs.2.5 lacs. The copy of the Office Memorandum issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners' Welfare), New Delhi dated 14th July, 1995 was made available for perusal of this Court. The subject mentioned in the said Office Memorandum reads as under :-

"Treatment of Dearness Allowance as Dearness Pay for the purpose of Death Gratuity and Retirement Gratuity and raising the maximum limit of gratuity from Rs.1.00 lakh to Rs.2.50 lakhs." The relevant extract of the Office Memorandum are, "accordingly, the President is pleased to decide the dearness allowance linked to AICPI 1201.66 as indicated below shall be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity / death gratuity under the Central Civil Services Pension Rules, 1972, in the case of Central Government Employees and retire or die on or after 1st April, 1995.

3.0. The Government Resolution No. NVT-1195/GOI/9-P dated 10th January, 1996 is produced at annexure-D to the

petition. The titled of G.R. is "Treatment of portion of Dearness Allowances as Dearness Pay for the purpose of Death-cum-Retirement gratuity and raising maximum limit of gratuity from Rs.1.00 lac to Rs.2.50 lacs.

4.0. In sub-para 2 of para 2 of the G.R. it is mentioned that "after careful consideration, Government is pleased to decide that dearness allowance linked to AICPI 1201.66 as indicated below shall be treated as Dearness Pay reckoning emoluments for the purpose of death-cum-retirement gratuity for the State Government employees who retire or die on or after 1st April, 1995.

4.1. Mr. Clerk learned advocate appearing for the petitioners in all these petitions submits that when all Central Government employees and the State Government employees are given the benefit of higher limit of gratuity amount of Rs.2.5 lacs, the same benefit should be extended to the petitioners, also who are the employees of the respondent-Corporation, [Gujarat State Road Transport Corporation] and as they also have retired on or after 1st April, 1995.

5.0. Learned advocate appearing for the respondent-Corporation submit that the Corporation is having its own rules for pension wherein, about gratuity it is mentioned that the gratuity will be governed under the present rules of the Corporation or by the Act of 1972 from the date of its coming into force. It is also mentioned in the said clause that provisions which will be beneficial to the employees, will be followed for granting benefit of gratuity. The learned advocate for the respondents contended that neither the Office Memorandum of the Central Government nor the Government of Gujarat Resolution dated 10th January, 1996 has any application to the employees of the respondent-Corporation. It is also submitted that in para 6 of the said Resolution, it is stated that "these orders will apply to all employees of the State Government, Panchayat employees, Teaching and non-Teaching staff of non-Government grant-in-aid Schools/ Staff of Universities and other employees to whom said pension scheme has been made applicable and pension scheme is into force." Learned advocates also submitted that "the date of giving benefit of the enhanced limit of gratuity" i.e. 1st April, 1995 is not applicable to the employees of the respondent-Corporation.'

6.0. Learned advocates also submit that Payment of Gratuity Act was amended by an Ordinance, a copy of the

which is produced at annexure-B. An Ordinance to amend the Payment of Gratuity Act, 1972, Subsection 2 of Section 1 of the said Ordinance states that. `it shall come into force it once',"

6.1. Meaning thereby, that Ordinance came into force from the date of its publication in the Gazette of India and that is 24th September, 1997. The learned advocate submits that at a later point of time, the said Ordinance culminated into an Act being the Payment of Gratuity (Amendment) Act, 1978." The subsection 2 of the Act says that it shall be deemed to have come into force on 24th Day of September, 1997. It is submitted by the learned advocate that if at all the legislature wanted to give a retrospective effect to the Ordinance, the same could have been provided as is provided under the Act. Though the Act was published on 22nd June, 1998, it is made effective since 24th September, 1997. But the Ordinance says that it shall come into force at once. Thus, Legislature never wanted to give retrospective effect to the said Ordinance.

7.0. In view of the aforesaid discussion, the contentions raised by the learned advocate for the petitioners does not find favour and the same are not accepted. It may not be out of place at this juncture to note that whenever an event of prescribing a cut of date takes place, there is always a group of persons who have heart burning because by providing a `cut of date', certain persons who are beyond that date, stand to loose and persons who are within that date get the benefits. In the present case also, it has happened like that. The Central Government and State Government employees are getting the benefit of enhanced limit of gratuity from 1st April, 1995, while the employees of the respondent-Corporation are not getting that benefit, They will be getting the same only from the date "The Gratuity Act" stands amended i.e. 24th September, 1997. Under this clear position of law the present petitioners do not get any benefit. These petitions are accordingly rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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